

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

La Jolla Electric, Inc.

Case No. 14-0125-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR

Affected subcontractor La Jolla Electric, Inc. (La Jolla), made a timely request for review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to the work of improvement known as the Greenfield Middle School Gym/Multipurpose Bldg./Theater Project (Project) performed for the Cajon Valley Union School District (District) in San Diego County. The Assessment determined that \$32,345.92 in unpaid prevailing wages and \$36,235.00 in statutory penalties were due. La Jolla made a timely payment of the unpaid prevailing wages to DLSE pursuant to Labor Code section 1742.1, subdivision (a).¹ A Hearing on the Merits was held on June 16, 2015, in Los Angeles, California, before Hearing Officer Jessica L. Pirrone. Max D. Norris appeared for DLSE. There was no appearance for La Jolla. Now, based on un rebutted evidence showing that La Jolla failed to pay the workers the required prevailing wages, the Director of Industrial Relations affirms the Assessment.

Facts

Failure to Appear: In an October 13, 2014, letter to the Hearing Officer and DLSE, La Jolla's former lawyers stated that all correspondence to La Jolla should be addressed to John Glinatsis, President, La Jolla Electric, Inc., 665 Opper Street, Escondido CA 92029 and that Glinatsis could be reached by telephone at (760) 747-7663.

¹ All further statutory references are to the California Labor Code, unless otherwise indicated.

In or about December 2014, DIR discovered that the October 2014, letter provided a nonworking telephone number for Glinatsis. On December 5, 2014, the Hearing Officer caused to be served a Notice of Prehearing Conference, setting the Conference for February 23, 2015, at 3:00 p.m., and requesting that Glinatsis provide a working telephone number.

At the time of the Prehearing Conference, Glinatsis had not provided a working telephone number nor had he otherwise made himself available. Accordingly, the Prehearing Conference proceeded in his absence. The matter was set for a Hearing on the Merits on June 16, 2015, at 10:00 a.m.

The Minutes of the February 23, 2015, Prehearing Conference were served on Glinatsis, giving him notice of the date, time and location of the Hearing on the Merits. The day before the scheduled Hearing on the Merits, Norris forwarded to the Hearing Officer an email from the law firm of Schwartz, Semerdijan, Cauley & Moot LLP stating that, at Glinatsis' request, it was advising Norris that La Jolla would not be appearing at the June 16 Hearing on the Merits.

The Hearing Officer conducted the Hearing on the Merits in La Jolla's absence for the purpose of formulating a recommended decision as warranted by the evidence pursuant to California Code of Regulations, title 8, section 17246, subdivision (a). DLSE's evidentiary exhibits were admitted into evidence without objection, and the matter was submitted on the evidentiary record. No testimony was taken.

Assessment: The facts stated below are based on Exhibits 1 through 33 submitted by DLSE, and other documents in the Hearing Officer's file.

In November 2010, Hamann Construction, Inc., entered into a public works contract with Cajon Valley Union School District regarding the Project and subcontracted with La Jolla to perform electrical work. The applicable prevailing wage determination and classification is SDI-2010-2 (Inside Wireman, Technician).² La Jolla workers performed work on the Project from approximately August 2011 through April 2013.

² According to the undisputed Assessment, there are 24 inside wireman who were not paid the correct rate. Of those, 12 were journeymen and 12 were apprentices. Of the 12 apprentices, 6 were level 1, 3 were level 2, 2 were level 4 and one was level 8.

According to the Assessment, La Jolla failed to pay the required prevailing wages to 24 of its workers on the Project in the aggregate amount of \$32,345.92. In addition, DLSE assessed \$35,460 in penalties under section 1775 at the mitigated rate of \$30.00 per day for 1182 instances of failure to pay the applicable prevailing wages. DLSE also assessed \$775.00 in penalties under section 1813 for 31 instances of failure to pay the proper overtime rate.

Within 60 days of service of the Assessment, La Jolla submitted to DLSE the full amount of the unpaid prevailing wages.

Discussion

Sections 1720 and following set forth a scheme for determining and requiring the payment of prevailing wages to workers employed on public works construction projects. DLSE enforces prevailing wage requirements not only for the benefit of workers but also “to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.” (§ 90.5, subd. (a), and *see Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976.)

Section 1775 requires, among other things, that contractors and subcontractors pay the difference to workers who received less than the prevailing rate and also prescribes penalties for failing to pay the prevailing rate. During the relevant period, under section 1775, the penalty was a maximum of \$50.00 for each calendar day for each worker paid less than the prevailing wage.

During the relevant period, Section 1813 prescribed a fixed penalty of \$25.00 for each instance of failure to pay the prevailing overtime rate when due.

Section 1742.1, subdivision (a) provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if those wages are not paid within sixty days following the service of a Civil Wage and Penalty Assessment.

When DLSE determines that a violation of the prevailing wage laws has occurred, a written Civil Wage and Penalty Assessment is issued pursuant to section 1741. An affected

contractor may appeal that assessment by filing a Request for Review under section 1742. The contractor "shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect." (§1742, subd. (b).)

In this case, the record establishes the basis for the Assessment and La Jolla has presented no evidence to disprove the basis for the Assessment. Accordingly, the Assessment is affirmed.

FINDINGS AND ORDER

1. Affected subcontractor La Jolla Electric, Inc. filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.
2. Penalties under section 1775 are due in the amount of \$35,460.00 for 1,182 violations. Hamann Construction, Inc. and La Jolla Electric, Inc., are jointly and severally liable for these penalties pursuant to section 1743.
3. Penalties under section 1813 are due in the amount of \$775.00 for 31 violations. Hamann Construction, Inc. and La Jolla Electric, Inc., are jointly and severally liable for these penalties pursuant to section 1743.

The amounts found remaining due in the Assessment as affirmed by this Decision are as follows:

Penalties under section 1775, subdivision (a):	\$35,460.00
Penalties under section 1813:	\$775.00
TOTAL:	\$36,235.00

The Civil Wage and Penalty Assessment is affirmed as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: 6/22/2015


Christine Baker
Director of Industrial Relations